No. 205.

No. 531.

Brief of Wilson for D.

IN THE

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JAMES H. McKENNEY,
Clerk

# SUPREME COURT

Filed August 20, 1900.

## UNITED STATES.

OCTOBER TERM 1899.

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EDWARD C. BAGGS, AS RECEIVER OF THE DENVER CITY RAILROAD COMPANY,

*Plaintiff in Error,*

vs.

ALBERT G. MARTIN, HARRY D. MARTIN, HERMAN H. MARTIN,

*Defendants in Error.*

No. 205

On certificate of the United States Circuit Court of Appeals, Eighth Circuit.

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**BRIEF FOR DEFENDANTS IN ERROR.**

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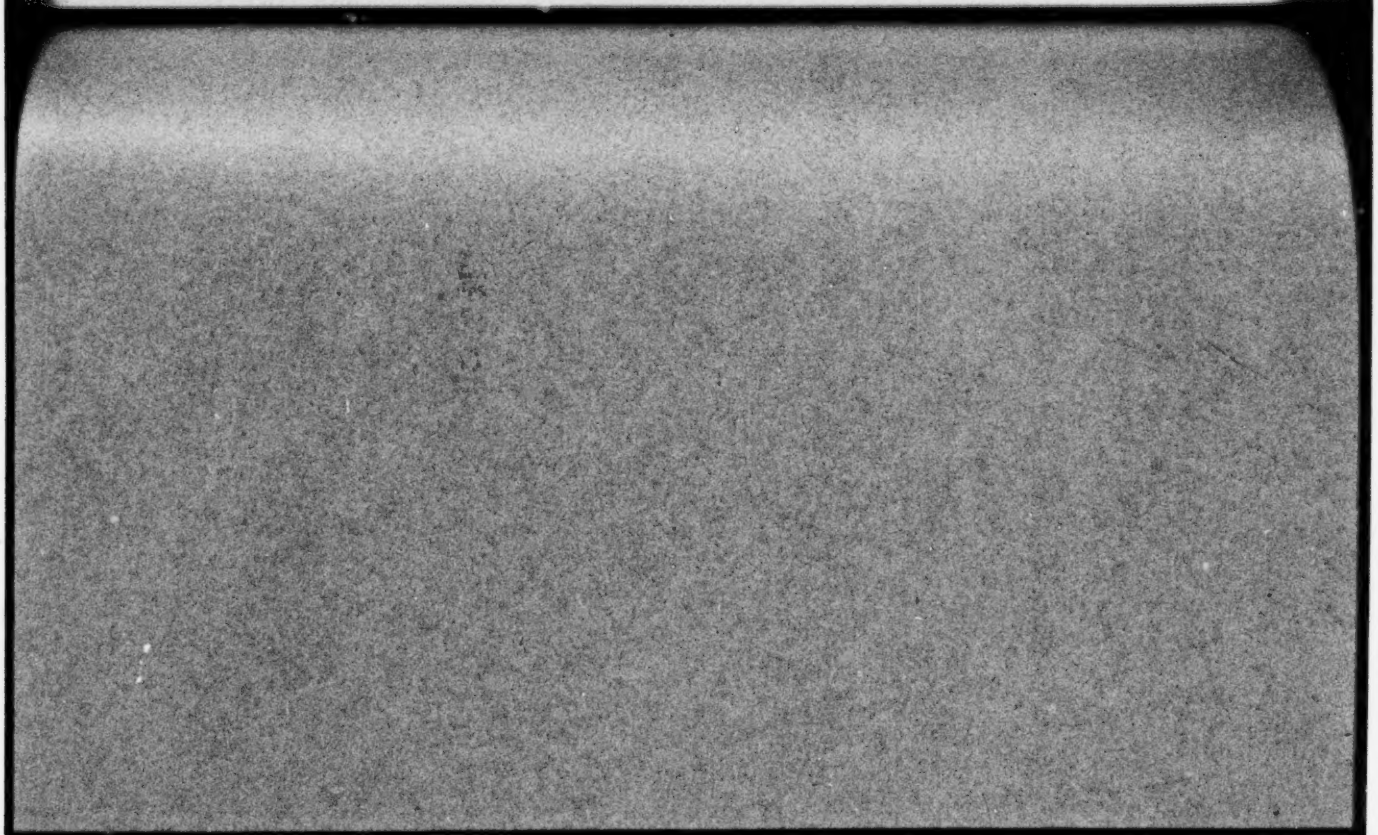
E. H. WILSON,
E. KEELER and
H. N. SALES,
Counsel for Defendants in Error.



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This was an action brought by the defendants in error in the state court of Colorado for the recovery of $5,000 under the statutes of Colorado, as damages alleged to have been sustained by them in consequence

of the death of their mother through the negligence of the plaintiff in error while conducting his business as receiver of The Denver City Railroad Company, to which he had been appointed by the Circuit Court of the United States for the district of Colorado.

The defendant presented to the state court his petition alleging the facts of his appointment as receiver, as charged, his qualification, and subsequent discharge of his duties as such; that plaintiffs' action was of a civil nature for the recovery of $5,000 against him as such receiver, and growing out of his official transactions under said appointment; that the plaintiffs' action is one arising under the laws of the United States and is ancillary to said action in said Circuit Court in which he was appointed receiver; a bond was tendered and the order of removal was granted and the copy of the record duly entered in said Circuit Court.

In which court the cause proceeded to trial and a verdict and judgment thereon was rendered for the plaintiffs for $3,000.

The defendant thereupon sued out his writ of error to the United States Circuit Court of Appeals, of the Eighth Judicial Circuit; which court has now certified to this court the following questions, viz.:

> "First. In view of the provisions contained in section 3 of the judiciary act approved on March 3, 1887 (25 Statutes, c. 866, p. 436), permitting receivers appointed by any court of the United States to be sued in respect to any act or transaction of his in carrying on the business connected with such

property without the previous leave of the court in which such receiver is appointed—was it competent for said Edward C. Baggs, as receiver of The Denver City Railroad Company, to remove said cause from the District Court of Arapahoe county, wherein he was sued, to the Circuit Court of the United States for the district of Colorado?

"Second. Did said Circuit Court for the district of Colorado, by virtue of the aforesaid removal, acquire lawful jurisdiction of said cause and power to render the aforesaid judgment therein?"

The questions certified relate to the right of removal on the ground that the action brought by the plaintiff in the state court was ancillary to the action pending in the United States Circuit Court in which the defendant was appointed receiver; and the jurisdiction of said Circuit Court by virtue of such removal.

We apprehend no ground for claiming that the action was removable on such petition and bond upon the ground that the action was ancillary to the action pending in the United States Circuit Court in which the defendant was appointed receiver.

The statute has not provided for removals in such cases, and it was not the course to be pursued prior to the act of March 3, 1887, to take the case from the state court or to bar further action in that court. Defendant in error does not insist that a removal could have been based upon that ground; but does insist that the receiver had a right to have the cause removed under the petition filed by him, on the ground

that the action was one arising under the laws of the United States, and that the Circuit Court of the United States thereupon acquired jurisdiction. That an action against a receiver appointed by the Circuit Court of the United States, affecting the administration of the trust, is an action arising under the laws of the United States, is held in Texas Pacific Railroad Co. vs. Cox, 145 U. S., page 593, and cases cited. It was said in Tompkins vs. MacLeod et al., 96 Fed. Rep., 927, by the United States Circuit Court in the district of Kentucky:

> "An action against receivers appointed by a federal court is one per se arising under the laws of the United States, and when brought in a state court is removable, under the removal acts, where the jurisdictional amount is involved, regardless of the citizenship of the parties. The right of removal in such case is not affected by the provision of the judiciary act (25 Stat., 436) permitting such receivers to be sued in state courts without first obtaining leave of the court which appointed them."

To the same effect is Ray vs. Pierce, Circuit Court of Indiana, 81 Fed. Rep., 881.

In Sullivan vs. Barnard, 81 Fed. Rep., 886, the Circuit Court of Missouri, in a case involving less than $2,000, seemed to hold a different view, but it was taken for granted that the right of removal was clear when the jurisdictional amount was involved.

In view of these decisions, the right of removal, and consequent jurisdiction of the federal court in such cases seems to be well established.

That on the 23d day of May, 1900, a stipulation was filed in this court wherein the "plaintiff in error serve his argument within sixty days, and counsel for defendants in error answer the same within thirty days thereafter, and the counsel for plaintiff in error to reply within fifteen days after defendants in error's arguments shall have been served." This stipulation was executed on May 19, 1900; and the plaintiff in error not having filed his brief herein, we submit the foregoing authorities without further argument, reserving the right upon plaintiff in error filing a brief to answer same.

Respectfully submitted,

E. H. WILSON,
E. KEELER and
H. N. SALES,
Counsel for Defendants in Error.